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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,346	09/24/2003	Mohammad Jaber Borran	088245-0108	7074
23524	7590	09/29/2008	EXAMINER	
FOLEY & LARDNER LLP			BURD, KEVIN MICHAEL	
150 EAST GILMAN STREET				
P.O. BOX 1497			ART UNIT	PAPER NUMBER
MADISON, WI 53701-1497			2611	
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			09/29/2008	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/671,346	BORRAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kevin M. Burd	2611	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 08 July 2008.  
 2a) This action is **FINAL**.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 41,42,45-50,53-58 and 61-75 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 41,42,45-50,53-58 and 61-75 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_.  
 4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_.  
 5) Notice of Informal Patent Application  
 6) Other: \_\_\_\_\_.

1. This office action, in response to the remarks filed 7/8/2008, is a non-final office action.

### ***Response to Arguments***

2. Applicant's arguments with respect to the claims have been considered and are persuasive. The declarations and remarks filed 7/8/2008 have overcome the previous rejections of the claims. However, upon further consideration, new grounds of rejection are made in view of De Gaudenzi et al (US 2006/0209982).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 41, 42, 45, 49, 50, 53, 57, 58 and 61-65 are rejected under 35 U.S.C. 102(e) as being anticipated by De Gaudenzi et al (US 2006/0209982).

Regarding claims 41, 42, 45, 49, 50, 53, 57 and 58, De Gaudenzi discloses a method and apparatus for transmitting a signal. A nominal signal to noise ratio for transmitting the digitally modulated signal is determined (claim 1). A stream of

modulated symbols are generated (claim 1) according to amplitude and phase shift keying coded modulation (abstract). A signal constellation is chosen so as to maximize a minimum geometrical distance between the pairs of points of the digital constellation (claim 1). The modulated symbols are then transmitted to the receiver (figure 11).

Regarding claims 61-65, claim 1 of De Gaudenzi recites mapping the modulation symbols where the signal constellation comprising a number of digital signal points equally spaced on at least two concentric rings having respective predetermined radii, where the ratio of the radii of the concentric rings is chosen so as to maximize the minimum geometrical distance between pairs of points of the digital signal constellation.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 46, 47, 48, 55 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over De Gaudenzi et al (US 2006/0209982) in view of Won (US 7,269,436).

Regarding claims 46-48 and 54-56, De Gaudenzi discloses the method and apparatus stated above in paragraph 3. De Gaudenzi does not disclose the number of transmit antennas is determined from a message received over the wireless channel. Won discloses the transmitter can estimate the channel covariance matrix using a

preamble transmitted from the receiver. The transmitter can also update the number of antennas and the power allocation according to the eigenvalues of the estimated covariance matrix (column 7, lines 42-48). Therefore, the number of transmit antennas is determined from the information in the preamble (header) of the received signal. It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teaching of Won into the method and apparatus of De Gaudenzi. Controlling the number of antennas used according the channel conditions will minimize the power consumed by the transmitter, reducing the cost of operating the transmission system.

### ***Conclusion***

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Borran et al (US 7,088,784) discloses a similar system to that which is claimed in the instant application. The method and system is recited in claims 2, 7 and 12. Walker et al (US 7,006,578) discloses improving bit error probability by maximizing the minimum distance between points on a constellation. One of two constellations is selected according to characteristics of a channel (PAR) in column 4, lines 15-32).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kevin M. Burd whose telephone number is (571) 272-3008. The examiner can normally be reached on Monday - Friday 9 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David C. Payne can be reached on (571) 272-3024. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kevin M. Burd/  
Primary Examiner, Art Unit 2611  
9/22/2008